REMARKS

Rejection of Claims 1-4, 8-9, 11-14, and 16-18 under 35 U.S.C. § 102(e) as being anticipated by US 2004/0147276 (Gholmieh).

The Office Action has cited Gholmieh (US 2004/0147276) for a 102(e) rejection of claims 1-4, 8-9, 11-14, and 16-18. The filing date for the cited reference Gholmieh (US 2004/0147276) is December 16, 2003 which is three months after the September 16, 2003 filing date of the application under consideration. Therefore, Applicant understands that the related provisional patent application serial no. 60/433937, filed on December 17, 2002, is the true basis for the rejection. Applicant has reviewed and considered Gholmieh-Provisional (60/433937) as well as Golmieh (US 2004/0147276) in order to clarify the differences between Gholmieh-Provisional (60/433937) and Gholmieh (US 2004/0147276).

Applicant respectfully submits that Gholmieh-Provisional (60/433937) and Gholmieh (US 2004/0147276) do not anticipate, either expressly or inherently, each and every element as set forth in independent claims 1, 12, and 16. Specifically, independent claims 1, 12, and 16 requires "determining a communication channel variance condition" and "establishing a headroom value based on the communication channel variance condition" which is not anticipated either expressly or inherently, in Gholmieh-Provisional (60/433937) or Gholmieh (US 2004/0147276).

Gholmieh-Provisional (60/433937) and Gholmieh (US 2004/0147276) are directed to a method for reducing the feedback overhead that occurs due to constant reporting of power headroom to BTS. Gholmieh-Provisional (60/433937) and Gholmieh (US 2004/0147276) describe methods in which the mobile (a) reports the absolute measure of the power headroom at the mobile infrequently and (b) in between full updates of the available power headroom, the mobile sends back a "differential" bit that informs the BTS whether the mobile increased or decreased its power, on the reverse link power headroom reporting channel. Gholmieh-Provisional (60/433937) and Gholmieh (US 2004/0147276) further describe that a RBS (radio base station) can correctly deduce the new power headroom of the mobile by using the last reported power headroom value from the mobile and the feedback of the subsequent power control decisions at the mobile (that are sent in the differential bit). See Gholmieh-Provisional (60/433937) page 2, Description. Note that power control is not synonymous with

"communication channel variance." Although not detailed in Gholmieh-Provisional (60/433937), Gholmieh (US 2004/0147276) paragraphs [0003-0006] specify that power control is affected by the number of mobile stations simultaneously transmitting. No where does Gholmieh-Provisional (60/433937) or Gholmieh (US 2004/0147276) imply that a "communication channel variance condition" is used to control power.

Gholmieh-Provisional (60/433937) and Gholmieh (US 2004/0147276) simply do not show or suggest "determining a communication channel variance condition" and "establishing a headroom value based on the communication channel variance condition" as required by independent claims 1, 12, and 16. Gholmieh-Provisional (60/433937) only updates the headroom value at the BTS based on the last reported power headroom and the power control decisions at the mobile station sent to the BTS in the form of differential bits.

Claims 2-4, 8-9, and 11 depend on claim 1, claims 13-14 depend on claim 12, and claims 17-18 depend on claim 16, and thus these dependent claims are also not anticipated by Gholmieh-Provisional (60/433937) or Gholmieh (US 2004/0147276). Reconsideration and withdrawal of the rejection of claims 1-4, 8-9, 11-14, and 16-18 under 35 U.S.C. § 102(e) as being anticipated by Gholmieh (US 2004/0147276) and Gholmieh-Provisional (60/433937) is respectfully requested.

Rejection of Claims 5-6, 15, and 19-20 under 35 U.S.C. § 103(a) as being unpatentable over US 2004/0147276 (Gholmieh) in view of US 6,563,810 (Corazza).

Corazza fails to overcome the deficiencies of Gholmieh-Provisional (60/433937) and Gholmieh (US 2004/0147276) because Corazza also does not show or suggest "determining a communication channel variance condition" and "establishing a headroom value based on the communication channel variance condition" as recited in independent claims 1, 12, and 16. Corazza uses a maximum power which is reduced by the headroom power to provide for power control variations. However, for the case of battery-limited condition, Corazza chooses the lesser power denoted by P(R). P(R) is a transmit value selected for reliable transmission and it does not contain any headroom or margin for power control variations. See Corazza, col. 6, lines 30-50.

Thus, claims 5-6, 15, and 19-20 are not unpatentable over Gholmieh-Provisional (60/433937) and Gholmieh (US 2004/0147276) and Corazza. Reconsideration and withdrawal of the rejection of claims 5-6, 15, and 19-20 under 35 U.S.C. 103(a) as being unpatentable over

Gholmieh (US 2004/0147276) and Gholmieh-Provisional (60/433937) in view of Corazza is respectfully requested.

Rejection of Claim 7 under 35 U.S.C. § 103(a) as being unpatentable over US 2004/0147276 (Gholmieh) in view of US 7,023,822 (Czaja).

Czaja, like Corazza, also fails to overcome the deficiencies of Gholmieh (60/433937) and Gholmieh (US 2004/0147276) in that Czaja does not show or suggest "determining a communication channel variance condition" and "establishing a headroom value based on the communication channel variance condition" as recited in independent claim 1.

Claim 7 depends indirectly upon claim 1 and thus is not unpatentable in view of Gholmieh (US 2004/0147276) and Gholmieh-Provisional (60/433937) and Czaja. Reconsideration and withdrawal of the rejection of claim 7 under 35 U.S.C. 103(a) as being unpatentable over Gholmieh (US 2004/0147276) and Gholmieh-Provisional (60/433937) in view of Czaja is respectfully requested.

Rejection of Claim 10 under 35 U.S.C. § 103(a) as being unpatentable over US 2004/0147276 (Gholmieh) in view of US 2003/0002464 (Rezaiifar)

Rezaiifar also fails to overcome the deficiencies of Gholmieh-Provisional (60/433937) and Gholmieh (US 2004/0147276) in that Rezaiifar does not show or suggest "determining a communication channel variance condition" and "establishing a headroom value based on the communication channel variance condition" as recited in independent claim 1. Cited paragraphs [0095]-[0096] of Rezaiifar simply state that the maximum rate is a function of the current reverse rate added to the power headroom parameter divided by the energy-per-bit required.

Claim 10 depends indirectly upon claim 1 and thus is not unpatentable in view of Gholmieh-Provisional (60/433937) and Gholmieh (US 2004/0147276) and Rezaiifar. Reconsideration and withdrawal of the rejection of claim 10 under 35 U.S.C. 103(a) as being unpatentable over Gholmieh (US 2004/0147276) and Gholmieh-Provisional (60/433937) in view of Rezaiifar is respectfully requested.

Conclusion

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Should the Examiner have any questions, comments, or suggestions, the Examiner is invited to contact the Applicant's attorney or agent at the telephone number indicated below.

Please charge any fees that may be due to Deposit Account 502117, Motorola, Inc.

Respectfully submitted,

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